

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

FLOREE DILLON

Claimant

VS.

BRANDON WOODS RETIREMENT CTR.

Respondent

AND

LIBERTY MUTUAL INS. CO.

Insurance Carrier

Docket No. 268,615

ORDER

Respondent and its insurance carrier request review of the December 14, 2005 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

ISSUES

The respondent filed for preliminary hearing and requested that claimant's ongoing psychological treatment be terminated. At the hearing respondent introduced several medical reports and the parties' counsel made oral arguments. After reviewing the evidence and hearing the arguments of counsel, the Administrative Law Judge (ALJ) denied respondent's request to terminate claimant's psychological treatment.

The respondent requests review. Respondent admits claimant suffered work-related injuries and provided treatment for claimant's knee and tail bone. Respondent argues it was not until claimant experienced pain in her neck and sought treatment for that condition that she began to experience depression. Respondent further argues the medical record establishes that claimant's depression was caused by the intervening neck condition and not by her fall at work. Consequently, respondent requests the Board reverse the ALJ and enter an order terminating claimant's psychological treatment.

Claimant initially argues the Board does not have jurisdiction, on an appeal from a preliminary hearing, to address an issue relating to medical treatment. In the alternative, claimant argues that it was during hospitalization for left knee replacement that treatment for her psychological condition was prescribed. And the psychologist attributed her

depression, in part, to her work injury. Consequently, claimant requests the Board to affirm the ALJ's Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant argues the Board does not have jurisdiction on appeal from a preliminary hearing to address whether a psychological condition is directly traceable to the work-related accident.

This is an appeal from a preliminary hearing order. By statute, not every alleged error is subject to review. The Board can review preliminary hearing orders in which an administrative law judge has exceeded his or her jurisdiction.¹ Moreover, the Board has specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are: (1) did the worker sustain an accidental injury; (2) did the injury arise out of and in the course of employment; (3) did the worker provide the employer with timely notice and written claim; and, (4) do certain other defenses apply.

The term "certain defenses" refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.²

Whether a worker needs ongoing medical treatment or whether the employer is failing to provide necessary medical treatment are not jurisdictional issues listed in K.S.A. 44-534a that are subject to review from a preliminary hearing order. Those issues do, however, comprise questions of law and fact over which an ALJ has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

At a preliminary hearing, an ALJ has the authority to determine whether an injured worker is in need of additional medical treatment.⁴ Since only jurisdictional issues are

¹ K.S.A. 44-551(b)(2)(A).

² *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

⁴ K.S.A. 44-551 and K.S.A. 44-534a.

subject to review in an appeal from a preliminary hearing, the Board has, in previous cases, held that the ability to directly trace psychological or psychiatric injury to a physical injury concerns only the nature and extent of the disability. The existence of such relationships are, therefore, a step removed from the jurisdictional milieu, and have no bearing upon the compensability of the claimant's accident and injury. The Board has, for this reason, declined to review the question at this stage of the proceedings.⁵ The Board now considers this analysis was wrong.

Whether a psychological condition is directly traceable to the work-related accident is a question that goes to the compensability of the condition or injury. Stated another way, it gives rise to a disputed issue of whether the psychological condition in this case arose out of and in the course of the employment. The Board's jurisdiction should not rest on whether the injury is physical versus mental or emotional. Furthermore, making such a distinction can have the undesired effect of delaying needed treatment. Accordingly, the Board finds it has jurisdiction to address the issue whether claimant's psychological condition is directly traceable to her work-related accident and the resulting physical injury.

After her fall at work in October 2000, the claimant was provided conservative medical treatment for an extended period of time. Claimant continued working with restrictions as she was provided medical treatment for her left knee. The medical records indicate that she was told in February 2001 that a total knee replacement was inevitable. Claimant was referred to Dr. Jeffrey C. Randall in the summer of 2001. In November 2001 Dr. Randall performed a Synvisc injection in an attempt to delay the total knee arthroplasty.

In December 2001, claimant developed severe chest and left arm pain and went to the emergency room where a myocardial infarction was ruled out. But an MRI revealed some cervical disk encroachment. Dr. Randall's medical note dated January 3, 2002, indicated claimant was very depressed. Claimant began treatment for her cervical complaints which included cervical steroid injections. In his office note dated February 6, 2002, Dr. Randall noted:

Ms. Dillon came in today in near tears and actually appeared to be an emotional wreck today. Her son DeJohn was with her and stated that she was having a hard time dealing with these two problems, both her neck and her knee.⁶

In February 2002, claimant had a cervical fusion of her neck and in May 2002 she had a left total knee replacement. Claimant began treatment for her depression after her knee surgery. Claimant has been seeing a psychiatrist for medication and a psychologist for therapy at Bert Nash Community Mental Health Center.

⁵ See e.g. *Eaton v. Coleman Company, Inc.*, No. 205,158, 1998 WL 695373 (Kan. WCAB Sep. 21, 1998); *Gilman v. Olathe Medical Center*, No. 211,937, 1997 WL 377940 (Kan. WCAB Jun. 18, 1997).

⁶ P.H. Trans., Resp. Ex. B.

Respondent referred claimant to Kathleen J. Keenan, Ph.D., for a psychological evaluation to determine whether her psychological complaints and diagnosis are related to her October 2000 work injury. The doctor diagnosed claimant with major depressive disorder which developed after she was not able to work. The doctor concluded her condition was due to a combination of factors including her 2000 work injury.

Because claimant was initially taken off work for her neck complaints the respondent concludes that is why claimant became depressed. However, Dr. Randall's office note reflects that claimant was merely attempting to delay her total knee arthroplasty and was having emotional difficulties coping with both her knee and neck complaints. And her continued inability to return to work was obviously based in part on her continued post-surgery knee complaints. Based on the record compiled to date, the Board finds that claimant has a psychiatric condition that is directly traceable to her work-related injury.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.⁷

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge Brad E. Avery dated December 14, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of February 2006.

BOARD MEMBER

c: Perry L. Franklin, Attorney for Claimant
John R. Emerson, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁷ K.S.A. 44-534a(a)(2).